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DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-191136

DATE: June 26, 1978

**MATTER OF: Michael Q. Adams - ACTION (Peace Corps) -
Loss of Personal Property**

DIGEST: Volunteer alleges Peace Corps failed to withdraw funds from his readjustment allowance for payment of insurance premium. His camera on which insurance had lapsed was stolen. He claims the value of the camera under the special authority granted ACTION by section 15(a) of Peace Corps Act, 22 U.S.C. § 2514(a), to reimburse volunteers for personal property losses. Evidence of agency's negligence is too doubtful to allow payment. Moreover, volunteer's negligence substantially contributed to the loss, thus precluding payment under ACTION's own regulations.

This decision is in response to a letter of January 17, 1978, from Ms. Constanza Angotti, Authorized Certifying Officer, ACTION, requesting our decision as to whether a voucher for \$1,281 may be paid to Mr. Michael Q. Adams, a Peace Corps volunteer, as reimbursement for the loss of a camera and related equipment stolen from him in Jinotepe, Nicaragua.

The material submitted indicates that at the time of his entry into the Peace Corps, Mr. Adams insured his camera equipment for 1 year with the Farmers Union Cooperative Insurance Company of Omaha. The policy extended coverage up to December 31, 1976. Mr. Adams alleges that in January 1976 he filled out and sent to the country desk a PC-10 form authorizing the Peace Corps to make a withdrawal from his readjustment allowance for the renewal premium and pay it to Farmers Union Cooperative on or before December 31, 1976. Such withdrawals are provided for in the Peace Corps Manual, section 223, paragraph VI, which provides:

"A. In some instances, a Volunteer can request payment of certain non-routine expenses from funds in the Readjustment Allowance account. These payments ('withdrawals') can be requested:

"1. When a single payment is required, or when payments are required on an other-than-monthly basis;

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"2. For purposes of:

- "a. Family support, insurance premiums, loans, and other obligations incurred prior to Peace Corps training and service * * *."

The request for withdrawal never reached Washington, D.C., and there is no evidence that the Peace Corps Office in Nicaragua ever received it or transmitted it. On March 22, 1977, after receiving notice from Farmers Union Cooperative that his policy had been cancelled due to nonpayment of the premium, Mr. Adams wrote to his Country Director to see that the premium would be paid as soon as possible.

Before any corrective action could be taken, Mr. Adams states that his camera equipment was stolen on April 16, 1977, while he was attending a party.

Peace Corps regulations permit reimbursement of losses of personal property but exclude photographic equipment. Section 235, paragraph III, of the Peace Corps Manual, provides:

"REIMBURSEMENT TO VOLUNTEERS FOR LOSS
OF PROPERTY NOT PROVIDED BY PEACE CORPS

- "A. Policy. Under section 15(a) of the Peace Corps Act, authority has been delegated to the Associate Director for International Operations, not the Country Director, to approve reimbursement of a Volunteer for the loss, damage or theft of property that was not provided by the Peace Corps or was not purchased by the Volunteer with an allowance provided by the Peace Corps, when such reimbursement is necessary to accomplish the purposes of the Peace Corps Act.

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- "B. Volunteers will not be reimbursed for:

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"2. Luxury items such as photographic equipment, jewelry and artifacts * * *."

However, it is the opinion of ACTION's General Counsel that, despite the agency regulations prohibiting reimbursement for photographic equipment, the amount is payable to Mr. Adams under section 15(a) of the Peace Corps Act, 22 U.S.C. § 2514(a) (1970), as a tort claim arising from the conduct of a Government employee acting within the scope of his employment. The Counsel's recommendation that reimbursement be made has been approved by the agency's Associate Director, Office of International Operations. The certifying officer has requested our decision as to whether the voucher for such reimbursement can be properly paid.

The language of section 15(a) authorizes the use of funds outside of the United States "for other administrative and operating purposes without regard to such laws and regulations governing the obligation and expenditure of Government funds as may be necessary to accomplish this Act." That language does not preclude this Office from deciding the question presented by the certifying officer. Compare the finality of determinations made by agency heads under the Federal Tort Claims Act, 28 U.S.C. § 2672.

We agree with the agency's General Counsel that section 15(a) funds are available for the settlement of tort claims arising overseas from the conduct of a Government employee acting within the scope of his employment. See H. Rep. No. 1115, 87th Cong., 1st Sess. 31 (1961). We are unaware, however, of any authority that construes the phrase "without regard to such laws and regulations governing the obligation and expenditure of Government funds" as providing a basis for allowance of a tort claim that on its merits would be for disallowance. We are also not persuaded by counsel's view that section 15(a)'s phrase "without regard to other laws and regulations" allows ACTION to disregard its own regulations promulgated under section 15(a). It seems to us that the agency is required to follow the regulations it has established under section 15(a).

Section 235, paragraph III, of the Peace Corps Manual, quoted above, also provides specifically in subparagraph A that reimbursement for the loss, damage, or theft of a volunteer's personal property "will be held to be necessary only if at least one of the following three situations exists:"

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- "1. The lost, damaged, or stolen property
 - "a. Represents all, or most all, of the Volunteer's personal property, and
 - "b. Negligence of the Volunteer was not a substantial cause of the loss, and
 - "c. The Country Director decides, after determining if any loss can be replaced under paragraph II above, that further reimbursement is needed for the Volunteer to continue his work effectively;
- "2. The personal property was in custody of Peace Corps at the time of its loss;
- "3. The personal property was lost due to natural disaster, public disorder, or confiscation by order of any government or recognized or de facto public authority."

The applicable provision here appears to be the requirement that the negligence of the volunteer was not a substantial cause of the loss.

The record before us is not clear concerning the pertinent facts. For instance, to whom did Mr. Adams give the FC-10 form? If it was given to a Government employee what did he do with the form? Was it sent to Washington by mail or diplomatic pouch? Did it ever arrive in Washington? Finally, if the form arrived in Washington, what happened to it then? The copy of the PC-10 form submitted by the claimant proves nothing, since there is no acknowledgment of receipt by any agency official.

Additionally, a question arises as to Mr. Adams' possible contribution to the failure to obtain insurance. The Peace Corps regulations in paragraph VI, B, 2, of section 223 states that "[a] copy of the approved withdrawal request will be returned to the Country Director for forwarding to the Volunteer." Paragraph VII of the same section states that "AF/VSS will process the request and return a notification of action taken within 45 days from date of request." Thus, long before March 22, 1977, it would appear that Mr. Adams had a duty to follow up on his request. There is

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no evidence that he made any attempt to following up during the 14-month period between January 20, 1976, and March 22, 1977.

Furthermore, the police report is dated May 9, 1977, and states that the volunteer appeared before the police and reported that the equipment was stolen on April 16, 1977. However, the telegram inquiry dated April 29, 1977, from the Country Office to Washington makes no mention of the loss.

The evidence of negligence by agency officials appears too doubtful to permit payment of the claim. Moreover, it appears that the negligence of the claimant was a substantial contribution to the loss, thus precluding payment under the agency's own regulations.

Accordingly, the voucher may not be certified for payment.

Deputy


Comptroller General
of the United States